

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOHNNIE BUNTING,

Plaintiff,

v.

ORDER
04-CV-731

CONWAY, ET AL.

Defendants.

This case was referred to Magistrate Judge H. Kenneth Schroeder, Jr. pursuant to 28 U.S.C. § 636(b)(1). Both plaintiff and defendants filed motions for partial summary judgment. On November 1, 2010, Magistrate Judge Schroeder filed a Report and Recommendation, recommending that defendants' motion for partial summary judgment be granted and plaintiff's motion for partial summary judgment be denied.

Plaintiff filed objections to the Report and Recommendation on November 8, 2010 and defendants filed a response thereto.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and Recommendation, and after reviewing the submissions, the Court adopts the proposed findings of the Report and Recommendation except subsections B(2), B(5) and B(6) of the Discussion section. In his objections to the Report and

Recommendation, plaintiff withdrew the claims addressed in those subsections of the Report and Recommendation. The Court approves those withdrawals and declines to adopt those subsections as moot.

Accordingly, for the reasons set forth in Magistrate Judge Schroeder's Report and Recommendation, defendants' motion for partial summary judgment is granted to the extent not mooted by plaintiff's withdrawals, and plaintiff's motion for partial summary judgment is denied.

This case is referred back to Magistrate Judge Schroeder for further proceedings, including the appointment of *pro bono* counsel for settlement negotiations and for the setting of a trial date before this Court if settlement negotiations are unsuccessful.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

DATED: December 20, 2010